APPENDIX A—(See Rule 21.)

Form of Description Roll.

Running Number.	Number in the Alienation List or Khatáwahi.	Name.	Caste or Sect.	Residence.	Personal identification.	Height.	Age at the date of preparing the Roll.	Monthly, Quarterly, Half-yearly, or Yearly, Amount.	How long continuable.	Signature of the party whose Descriptive Roll is prepared.	Signature of Witnesses of identification.	Signature of the Officer before whom the Descriptive Roll is taken.	Date of preparing the Roll.	REMARKS.
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

PAYMENTS.

When paid.	For what period.	Amount	To whom paid.	Signature of the Disbursing Officer.	When paid.	For what period.	Amount.	To whom paid.	Signature of the Disbursing Officer.	When paid.	For what period.	Amount.	To whom paid.	Signature of the Disbursing Officer.

APPENDIX B.—(See Rule 28).

Form of Certificate.

Whereas *A.B.* of is desirous of preferring a claim against *C. D.* of to establish his right to

(*here state clearly the nature of the claim*)

This is to certify that I, *E. F.*, Collector of , do hereby allow, under Section 6 of the Pensions Act, 1871, that the said claim may be tried by any Civil Court otherwise competent to try the same.

(Signed) *E. F.*,
Collector.

Dated at
this day of 18

Seal of the Collector.

(Notification by the Commissioner in Sind, No. 5753, dated 14th December 1881; *vide* G. R. No. 7171, dated 28th November 1881.)

7. Sharers of sub-divisions of a pension or grant are not joint payees. Rule 19 contemplates two sorts of payees, those persons to whom the whole of a pension or grant is payable jointly and not in shares. These persons can together, that is, jointly, receive payment in a lump sum. Rule 19 also contemplates persons to whom a pension or grant is

payable separately in distinct individual shares, and therefore not jointly in a lump sum. The rule provides that if these shares have been recognized and the shares registered separately in the names of the representative co-sharers, these entries shall hold good. Further, the Collector has power to direct the disbursing officer to sub-divide a pension or grant at the time of payment.

Rule 20 applies only to the first sort of payees and not to co-sharers, whether those who are registered sharers or those who have special permission in writing from the Collector. This rule provides that the lump sum, otherwise payable to two or more persons jointly, may, under certain circumstances, be paid to one or more only of such joint payees.

Rule 21 following provides that the recorded joint payees to whom the lump sum has been paid or those of such joint payees to whom under the last preceding rule the lump sum has been paid, shall be responsible for the proper distribution of the said lump sum.

One or more of several joint payees having an interest in the entire pension or grant may obviously be allowed to receive payment on behalf of the others; but when the shares are separately registered, why should one or more sharers be allowed to take the shares of the others in which they have no concern or interest.

Rule 19 provides that the Collector may allow the disbursing officer to make the sub-division. It follows the disbursing officer must pay each sharer his own share separately according to the sub-division.

(L. R. No. 539, dated 2nd April 1881; *vide* G. R. No. 2699, dated 14th May 1881.)

8. It is not seen what objection there can be to the payment of a sub-share under the Collector's special written order being made to the applicant and entered in his name whether the registered payee appears or not 'at the time of payment.' There is nothing in Rule 19 which prohibits such payment and entry. The words 'no such new entries shall be made in the record' in the first paragraph of the rule refer to entries 'which may hereafter be continued,' that is to say, permanent or continuous entries, and these, of course, require the sanction of the Commissioner. But a single payment, to be made once, under a special order, at the time of a particular payment, can, on the authority of that order, be entered by the disbursing officer against the name of the applicant.

Rule 15 requires the payment of pensions or grants to be made only to those persons whose names have been authorizedly entered in the records as the payees thereof. The Collector's written special order sanctioning a sub-division should expressly authorize for that one occasion the entry of the name of the payee of the sub-share and the consequent payment to him.

(L. R. No. 718, dated 20th June 1881; *vide* G. R. No. 3843, dated 2nd July 1881.)

9. Section 8 of Act XXIII of 1871 (Pensions Act), provides that all pensions or grants by Government of money or land revenue shall be paid in accordance with the rules prescribed by the Chief Controlling Revenue Authority. The rules which have been prescribed relate to the payment of pensions and grants which are made in cash by the Collector or the Deputy Collector or other authorized disbursing officer. These rules are not applicable to the payment of dues collected by village officers and payable to the superior holder of an alienated village, and which the superior holder may with the Collector's consent recover direct from the inferior holders in default of payment by the village officers. (L. R. No. 469, dated 20th April 1882; *vide* G. R. No. 2758, dated 27th idem.)

10. The rules framed under the provisions of the Pensions Act regarding the payment of pensions and grants, should be considered as strictly applicable to registered pensions and grants, the subdivision of which Government consider it desirable should neither be countenanced nor given effect to, beyond giving the Collector a discretionary power to allow disbursing officers to make sub-division at the time of payment.

The particular rule which authorizes the Collector to exercise this discretion should not be applied to doubtful cases, or to sharers whose claims are resisted and denied by the registered holders of the pension or grant.

The Act and the rules made thereunder contain ample provision for the disposal of claims relating to any pension or grant. (L. R. No. 490, dated 27th April 1882; *vide* G. R. No. 3331, dated 20th May 1882.)

11. Rule 11 of the rules made under the Pensions Act, 1871, is not applicable to the case of minors, and payment of arrears should be authorized under Rule 10, notwithstanding no application for payment has been made for more than six years: provided the Collector is satisfied that the minor, on whose behalf the application is made, is the legal heir of the deceased person to whom the arrears are due.

2. Section 6 of the Limitation Act, 1877, provides that nothing contained in that Act shall affect or alter the *period specially prescribed* by any special or local law; but this provision does not bar the exemption in favour of minors which is provided in the next following section, and which is applicable to all cases of applications made under any general, special or local law for which a period of limitation is prescribed either by the Limitation Act or by the law itself.

(L. R. No. 1268, dated 23rd September 1882; *vide* G. R. No. 7165, dated 13th October 1882.)

12. A cash allowance payable to two persons, A and B, was disbursed to them in alternate years,

so that if A received payment of the whole allowance during 1882, the other became entitled to receive it during 1883, and so on. A not having presented himself before the Mámlatdár to demand the money payable when his turns came, it remained unpaid for over six years. The other co-sharer B had, however, received payment of the allowance during the years in which it was payable to him according to the arrangement mentioned above. A having subsequently appeared and demanded payment of the money which he had not been able to receive for more than six years, the question was raised whether Section 11 of the rules published under Government Resolution No. 6849, dated 23rd December 1879, should be strictly applied to the case. The following opinion (No. 1650, dated 18th December 1882) recorded by the Remembrancer of Legal Affairs was circulated by Government to all Collectors and Commissioners :—

> "It appears that the pension receivable by A and B in alternate years is one and the same pension. B has duly applied for and received the pension in the years in which he was entitled to payment and his applications should, I think, be held to have kept the title to the pension both of himself and of A alive. The terms of No. 11 of the rules under Section 8 of the Pensions Act do not apply to the case any more than they would be applicable if A and B were one and the same individual who for some reason of his own had neglected to apply for payment in alternate years. Rule 9 is, I think, the only rule that can be fairly applied to the case."

(G. R. No. 22, dated 3rd January 1883.)

13. The Collector of Bombay is authorized under Section 5 of the Pensions Act XXIII of 1871 to investigate claims to fazendári allowances and other similar claims payable in Bombay. Rules and orders issued from time to time under the Pensions Act will be communicated to him. (G. R. No. 909, dated 9th February 1887, and G. M. No. 1381, dated 4th March 1887.)

14. It has been held by the High Court that Rule 16 of the Rules under the Pensions Act, 1871, does not apply to rights acquired to pensions before the Act came into force, as there is nothing to show that the Legislature intended it to have retrospective effect. (G. R. No. 7309, dated 28th September 1889.)

15. An application to be furnished with a certificate under Act XXIII of 1871 (Pensions Act) in order to enable the applicant to claim in the Civil Court the amount of certain haks due to him from the Inámdár and the village officers of a certain Inám village in the Poona District, was refused by the Collector on the strength of the ruling in Government Resolution No. 477, dated 17th January 1885, that Sections 4, 5 and 6 of the Act are not applicable to haks payable by Inámdárs; and the Collector's decision was confirmed by the Commissioner. The applicant then filed a suit in the Civil Court. The District Judge came to the conclusion that a certificate was necessary, and granted two

months' time to enable the applicant to procure it. On the matter being referred to Government for orders, the Remembrancer of Legal Affairs was consulted, and the following opinion recorded by that officer was circulated by Government to all Collectors and Commissioners:—

"The question whether the Pensions Act applies to haks payable direct by Inámdárs is not free from doubt. But as the District Judge holds that it does apply, there is no reason for combating that opinion, and if there is no other objection to the grant of the certificate which the plaintiff asks for, it may, I think, be granted."

(G. R. No. 8718, dated 17th December 1891.)

16. A question having been raised whether clause (*b*) of Rule 10 of the Rules under the Pension Act empowers Collectors to authorize the payment of the arrears of pension due to a deceased pensioner, if he has no legal heir, to the person who bears the expenses of his or her burial, it was directed that in such cases the Collectors may make payments at their discretion provided that the amount paid does not exceed the burial expenses incurred by the payee. (G. R. No. 1441, dated 27th February 1892.)

17. The applicability of Act XXIII of 1871 depends upon whether a grant is essentially one of land revenue merely or whether it is a grant of the soil. If it is a grant of the soil, *i. e.*, of the free hold or proprietary right therein, then as was held in *Raoji Narayan Mandlik* vs. *Dadaji Bapuji Desai* (I. L. R., 1 Bom., 523) the Act does not apply to it. But if it is essentially a grant of land revenue only, then the Act is applicable to it, as was held in *Ramchandra Maruti* vs. *Venkatrao and B. Mantri* (I. L. R., 6 Bom., 598). The incidental rights which accompany a grant cannot be held to override the plain intention of Act XXIII of 1871, if the grant is a grant of land revenue only. The latter point has been very clearly decided by the High Court of Madras in *Rama* vs. *Subba* (I. L. R., 12 Mad., 98), which was a case of a grant of land revenue coupled with the power of collecting it. (L. R. No. 512, dated 4th April 1892; *vide* G. R. No. 3369, dated 12th idem.)

18. The decisions at I. L. R., 1 Bom., 75; I. L. R., 1 Bom., 523, and I. L. R., 7 Mad., 191, show conclusively that the Pensions Act, 1871, is inapplicable to a grant of a village in Inám. (L. R. No. 316, dated 23rd March 1893; *vide* G. R. No. 3541, dated 15th May 1893.)

II.—DEVASTHÁNS AND OTHER RELIGIOUS ALLOWANCES.

1. The allowances to temples and other religious institutions formerly paid from the Khasgi or private funds of the Rája of Sátára and transferred by him to the public treasury in 1841, should be continued. Such items as were bestowed on individuals, and any others not partaking of the nature of permanent grants, should be resumed. (G. R. No. 863; dated 1st March 1862.)

2. The revenues of the State should not be thrown away on shrines or temples which are deserted. (G. R. No. 945, dated 7th March 1862.)

3. Allowances on account of "Shivrátri," "Nowratri," "Rámnavmi," "Janmashtami" and other special ceremonies, and other similar allowances regarding which doubts as to whether or not they are *bonâ fide* temple grants may arise, should be subjected to a deduction of one-third, and the remainder continued as permanent temple grants. (G. R. No. 2884, dated 25th August 1863.)*

---

* The Resolution was passed by Government in reference to a question raised by the Revenue Commissioner, N. D., in connection with the orders passed in Government Resolution No. 4309, dated 27th November 1862, on the general subject of cash alienations in Gujarát. The Resolution of 27th November 1862 is quoted below for ready reference :—

"The work of the Alienation Department in Gujarát has hitherto been mostly experimental, but the character of the several descriptions of grant has been ascertained, and little more information now remains to be collected. The settlement, therefore, should be prosecuted diligently on rules based on the experience obtained.

"2. The principal classes are below disposed of :—

Emoluments of Hereditary District Officers.

"3. The work to be done under this head is to prepare in every táluka an accurate record of the emoluments of each vatan or office, whether in land or in cash. The record should also show the date of every former enquiry, the names of the persons by whom the vatans are now held, and all other particulars.

Gameti Hissa.

"4. These are usually of a permanent character, and should be continued in the terms of the agreements under which they are held. If the terms of the agreements are found to be still observed, nothing further is required.

Devasthán (charged on the Huzúr or Táluka revenue).

"5. The past policy and proceedings of Government in regard to devasthán allowances or impersonal grants to temples and religious institutions are well summarized by Mr. Peile in the 12th to 27th paragraphs of his report. His Excellency the Governor in Council concurs with the Revenue Commissioner, Mr. Mansfield, in opinion that, giving due consideration to these past proceedings, an enquiry into titles should be waived in the case of all *bonâ-fide* temple grants which were submitted to the notice of Government at the beginning of British rule, and have since been deliberately continued.

"6. The records of former proceedings described by Mr. Peile should be carefully compared with the present payments, and a detailed report of the result should be submitted to Government through the Revenue Commissioner. The payments or grants should be recorded in the names of the temples and distributed to such agents as hold sanads empowering them to receive the money, or who may from time to time be appointed by the Committees, or by the persons who are recognized as the recipients of the money or managers of the temples.

Dharma'da'ys and Varsha'sans, (payable from the Huzur or Táluka Treasuries.)

"7. Mr. Peile has shown that in the earlier period of our rule in Gujarát, as elsewhere, personal charitable allowances were treated quite differently from grants to temples. The Governor in Council considers that the 'amended rules of 1842,' if a liberal interpretation be placed on the evidence available, are sufficient. These rules have been generally applied to the same

class of allowances in other districts, and are not inconsistent with the previous policy of Government in Gujarát.

Village Devastha'ns.

" 8. The village devasthán usually originated in grants by village officials from the village funds. In stating that these devasthán grants are as old as the villages themselves, Mr. Mansfield appears to have had in view only the 'Gaom Dev,' or village temple, founded when the village was established. He has overlooked a number of grants subsequently obtained by the managers of other temples from the Pátels who, until quite recently, had the management of village funds. It was owing to the change in the revenue system that direct payments were commenced from the Government treasuries, and the method already sanctioned for the treatment of these devasthán is intended to restore the management of the funds to the village communities, and remove all entries on account of them from the Government books. An exception should be allowed in favour of the village temples, which, from their antiquity and co-existence with the village itself, are fairly entitled to a continuance of the ancient contribution from the revenues of the villages in which they are situated.

Village Dharma'da'ys.

" 9. The holders of these, whether their future titles be decided under the amended rules of 1842, or on an equitable consideration of their claims on the State, cannot be entitled to more than a continuance of their allowances for life. When the survey is about to be introduced into a district, it is better to buy up the remaining allowance according to the scale sanctioned for life holdings.

" 10. Of the other allowances described by Mr. Peile, two items, viz., the compensation to Hakdárs and that to the Dhollera Grassias, require no remark. They have been already disposed of.

Kothlisánth.

" 11. The allowance called 'Kothlisánthi' are properly rents or profits derived from lands now held by Government but which were either the property of the sánth holders, or mortgaged to them by the village officers responsible for the Government dues, who, instead of allowing the mortgagees to remain in possession, resumed the land, and charged the village revenues with these annual allowances or sánths.

" 12. The Governor in Council concurs with the Revenue Commissioner in considering these allowances to be entitled to the same consideration as if the holders had remained in possession of the lands for the deprivation of which this compensation was granted. All such allowances, therefore, if plainly stated in the earliest extant account, to be held in exchange for lands resumed, (whether the land can now be identified or not,) and since paid without objection, should be continued on the terms on which the lands for which they were exchanged would now be continuable, provided that whenever by the terms of a mortgage-bond a sánth can be redeemed, or whenever owing to circumstances it is advisable to restore the land originally taken, the Revenue Commissioner should exercise his discretion so as to get rid of the annual money payment, if this can equitably be done.

" 13. All small Kothlisánths under Rs. 2 should be disposed of by payment of the present valuation, and holders of larger sums should be encouraged to accept the same terms.

" 14. Whenever there is no proof that land has been taken by Government in exchange, the recognition of the grant as a sánth should be disallowed, and payment should cease on the death of the present holder, unless a claim to longer continuance under any other rules be made out.

" 15. In settling this numerous class of allowances by the above rules, the Revenue Commissioner should be careful to economise labour by having all ordinary cases reported to him in a tabular or other succinct form, special cases only being submitted to Government. A record should be kept showing the

house, cannot be considered *bonâ fide* temple grants and should be dealt with as personal grants to the

---

proportion which these payments bear to the present value of the land for which they were exchanged.

"16. With respect to the kothlisánth allowances in the Mullik villages, the Governor in Council considers that the settlement of them should take place simultaneously with the revision of assessment in these villages.

Girás.

"17. Government did not initiate these payments, but found them, on obtaining possession of the country, generated by the disorders of the previous rule. The holders were treated with unexampled indulgence, but the peace of the country called for the policy then adopted, and faith should now be kept with their descendants, although they are no longer dangerous to the State. This the Governor in Council is prepared in the strictest sense to do, but he cannot allow that a tax at first so irregularly imposed on the community should now be extorted by the aid of legal proceedings from the public purse by others than those in whose favour the original arrangements were made, or that Government should be compelled to continue its good offices between the Grássias and the village communities in a manner to which it never pledged itself. It should, therefore, be publicly declared in every táluka, as the revenue survey settlement is introduced, that the new rates of assessment do not include any such collections, and that Government will in future not aid or take part in the collection of Grássias.

"18. In thus placing the Grássias in the same position with respect to the village communities which they originally held, the Governor in Council cannot allow them to resort to other than legal means to enforce their claims, and if any village communities decline to accede to the Grássias' demands, the latter must resort to the Civil Courts. At the same time the Governor in Council is not unwilling to make some sacrifice of revenue in order to relieve the Grássias from the necessity of resorting to law, and he is prepared, whenever the Grássia may be willing to receive from Government his present income, instead of collecting it direct from the villagers, to continue that income to him under such reasonable rules and restrictions as it may seem fit to Government to impose.

"19. The conditions on which this arrangement will be entered into are that the Grassia shall consent to abandon for the future his claims against the village communities, and in return the allowances he has hitherto enjoyed shall be continued by the State hereditarily (during good behaviour) to the male issue of the first person who receives the girás from the British treasury. The girás, or any portion of it, may further be continued to the lineal male issue of a brother of the first British recipient, in any case in which on enquiry the Revenue Commissioner may find that hardship would be felt by the discontinuance of the girás. If in any case, however, the allowance has been enjoyed on condition of service, that condition of service will not be abandoned, although it is not expected that such service can now be taken with advantage to the public.

"20. The amount of the allowances which will thus be paid shall in future be the sum as ascertained from the earlier records to be the original net payment to the Grássia, all extra payments or fees being discontinued. The only exception to this rule is the class of dharmádáys in Broach, which His Excellency in Council perceives to have been in some cases assigned by Grássias out of their allowances. If the connection with the girás be clearly traced, the amount should be added to the girás, and the recipient referred to the Grássia. If, on the other hand, the connection is not traceable, the allowance should be adjudicated under the amended rules of 1842.

Salámi and Khichri.

"21. The allowances known as salámi or khichri are hereditary, and should be so settled.

Moghlái Jághír.

"22. The Moghlai jághír allowances are peculiar to Surat. They are not numerous, but are of large amounts, and generally

individuals in whose houses the offerings are made. But this order is not to apply to cases already adjudicated on. (G. Rs. Nos. 621, dated 28th February 1863, and 452, dated 2nd February 1865.)

5. Government approve of the action of the Revenue Commissioner, N. D., in continuing permanently as devasthán grants certain allowances in Gujarát held on account of idols situated in private dwelling-houses, because they have been entered as such (and so continued ever since) in the early records, which Government have declared to be sufficient authority for their continuance, and also because the Hindu community is admitted to the worship of the idols just in the same way as in other cases. (G. R. No. 1160, dated 20th March 1865.)

6. Allowances held on behalf of devasthán in private dwelling-houses should be entered in the accounts as hereditary and continued for so long as there may be in existence any heirs of the original grantees, or of the earliest recorded recipients, in cases in which decisions declaring the grants to be permanent have been passed. Where such decisions have not been passed, the allowances will appear in the accounts under the heading "not specified", which includes all grants the tenure of which has not yet been finally determined. (G. R. No. 2626, dated 21st June 1865.)

7. There would be no anomaly in keeping the former subha summundhi devasthán of Rs. 5 and under as payments from the district treasury, the fact being that they were always paid from the district, while the gám summundhi were originally paid from the villages, and there would be no objection on the ground that village summundhi small sums will again be paid from the village, were small payments of subha summundhi to be continued from the district treasury. But as it is convenient to the Account Department to get rid of small payments from the district treasuries, and

---

involve questions which require special treatment. Separate reports on these cases should, therefore, be submitted to Government.

"23. With regard to the Moghlái haks or allowances belonging to the late Naváb, extract paragraphs 46 and 47 of Mr. Peile's report should be transferred to the Political Department; the Bukhshi's allowances having, as reported by the Revenue Commissioner, been already disposed of in that Department.

Gamti Sirpáv.

"24. The few cases under this head should form the subject of one general report, upon which the instructions of Government will be issued.

Life Property.

"25. Regarding the life payments referred to in paragraph 53 of Mr. Peile's report, specific instructions are not at present called for. If special cases requiring the orders of Government should arise, separate reports should be made.

"26. The Governor in Council trusts that those instructions will enable the Revenue Commissioner to bring speedily to a conclusion the enquiry into the cash alienations of Gujarát."

convenient to the recipients to be saved the journey for small amounts, it will be better to transfer for payment through the Pátels all amounts of Rs. 5 and under. Care must be taken to give the recipients a sanad recording that the allowances were formerly subha summundhi, and are now and henceforth to be paid through the Pátel. (G. R. No. 4662, dated 12th December 1868.)

8. The disbursement of all devasthán allowances of Rs. 5 and under may be entrusted to the hereditary Pátels.* But care should be taken to let the managers and others know the sums they are entitled to. Government do not want to resume any of the village petty devasthán allowances amounting to Rs. 5 and under, on the ground that the holders have not received payment within six years, but prefer to leave it to the Pátel to expend the amount himself towards the devasthán, if the holder be not present, he (the Pátel) remaining personally responsible to the holders for such expenditure or for non-payment in time, &c. The Pátel need not show the amount in the village books, nor keep any account further than is necessary for him to save himself from any civil action. Government will not trouble themselves any further after the sum is once paid from táluka treasuries to the Patels. (G. Rs. Nos. 2762, dated 10th June 1870, 1892, dated 10th April 1874, and 2960, dated 11th June 1874.)

9. In cases where these petty devasthán allowances are paid to hereditary Pátels, a case requiring the operation of Rule XI of the Pension Rules is not likely to occur, as Government divest themselves of all responsibility as regards the allowances after they are once disbursed. But when there is no hereditary Pátel in the village in which a religious institution is situated, the payment of any grant pertaining to it, whether it exceeds Rs. 5 or not, is to be made under the rules at the treasury of the district or táluka in which the village is situated. In such cases, Rule XI of the Pension Rules of course applies, and under it any pension or grant, whatever be its amount, for payment of which no application is duly made for more than six years, should be struck off the books and all arrears forfeited. (G. R. No. 3625, dated 5th May 1885.)

10. Before Government Resolution No. 3625, dated 5th May 1885, is applied, at least a three months' notice should be given to the holders of the allowances, so that they might claim the arrears within the notified time, failing which the allowances should be struck off. (G. R. No. 929, dated 4th February 1886.)

11. Payments on account of devasthán allowances should be made in accordance with the rules under the Pensions Act. (G. R. No. 8649, dated 14th November 1889.)

* See also Rule 13 of the Rules under the Pensions Act, 1871, Compilation of General Rules, page 298.

12. Government do not wish to have anything further to do with temple grants than merely to hand them over to the recognized or legal recipients whenever they appear and apply for them. If contending parties assert that they are the legal recipients, the Collector should not enter into or listen to their discussions, but should refer them for redress and settlement to a Civil Court. Any interference or connection with native religious establishments on the part of Government servants (excepting the mere payments of trust monies to the legal representatives) is in direct opposition of the orders of Government. (G. R. No. 4712, dated 29th November 1864.)

13. It is not the duty of Government to consider the propriety of the life and conduct of the recognized manager for the time being of a temple endowment. (L. R. No. 915, dated 29th July 1882; *vide* G. R. No. 5686, dated 22nd August 1882.)

14. The non-interference with temple endowments has reference not to the recognition of a proper claim to receive the allowance but to the mode in which the allowance when received is expended. (G. R. No. 6216, dated 31st July 1885.)

15. Government and their officers are precluded from taking any part whatever in the nomination or appointment of any trustee or manager of religious endowments by Section 22 of Act XX of 1863, which is by its terms of general application throughout British India, though the rest of the Act has not been extended to any part of this Presidency except Kánara (Bombay Act VII of 1865). Nor can the validity of an election be scrutinized by Government or their officers. (L. R., Nos. 1268, dated 24th November 1888, and 1145, dated 5th September 1889; *vide* G. Rs. Nos. 8593, dated 24th December 1888, and 7982, dated 21st October 1889.)

16. The Collector of Ahmedabad is authorized to exercise the powers named in Section 539, Civil Procedure Code, in the case of the religious endowments of the old mosques in Ahmedabad. He should, however, follow the usual rules relating to suits to which Government or a Government officer is a party, in respect of any suit which he proposes to institute, that is, the proposal should be referred through the Remembrancer of Legal Affairs with full details for the orders of Government before any plaint is filed, and all subsequent proceedings should also be governed by the same rules. (G. R. No. 3645, dated 28th May 1891.)

17. Bombay Act VII of 1865 having extended the provision of Act XX of 1863 of the Government of India to the district of Kánara, the following rules were framed by the Collector of that district, with the approval of Government, for the management of the religious endowments in that district:—

I.—The Committees contemplated in Section 7 of Act XX of 1863 shall be composed of members to be nominated by the Collector of Kánara and appointed by Government. Written notices, in the vernacular, of the appointments so made should be communicated to the Mámlatdár, who should post a copy at his kacheri, and a few more at conspicuous parts of the town.

II.—On the occurrence of a vacancy, the remaining members of the Committee shall forthwith give public intimation of such vacancy by a notice to be posted at the Mámlatdár's kacheri, and by causing a written or printed notice thereof to be affixed to some conspicuous place in each religious institution under their management.

III.—The notice shall set forth the name of the member in whose stead a new member is to be elected, the date on which the vacancy occurred, and the place, day, and hour fixed for the election by the remaining members of the Committee.

IV.—The place of the election shall be the principal religious institution under the management of the Committee, or the kasba town of the district, or of the táluk, in which the institution, where the vacancy occurs, is situated.

V.—The day to be fixed for the election shall not be earlier than one month, or later than three months, from the date on which the vacancy occurred, and within those limits shall, as far as practicable, be so fixed as to enable persons living within the jurisdiction of the Committee, and entitled to a vote at the election under Rule XIII, to attend and vote for a new member.

VI.—The voting shall commence at 6 A.M. and close at 5 P.M. of the day fixed for the election.

VII.—The remaining members of the Committee shall appoint a sufficient number of respectable and trustworthy persons as tellers to receive and register the votes of the electors. No person shall be appointed a teller who is himself a candidate for the vacant office, or the agent of such candidate.

VIII.—The remaining members of the Committee shall make such arrangements for taking the votes of the electors as will admit of all voters having reasonable time and opportunity to register their votes within the hour fixed, and shall appoint not less than two tellers to each office where the votes may be given. Each elector shall declare to the tellers in writing the name, residence, occupation, or other description, of the person for whose appointment he votes, as well as his own.

IX.—The tellers shall immediately enter the names, &c., of the elector and his nominee in a book which shall be provided for the purpose by the Committee, and shall require the voter to attest the registry by signature or mark. The vote-papers shall also be duly filed by the tellers.

X.—The books of registry shall be in the annexed form, and at the close of the voting shall be signed by the tellers who took the votes therein registered.

XI.—The result of the election shall be declared by the remaining members of the Committee within twenty-four hours after the closing of the voting.

XII.—A notice containing the result of the election, and signed by the remaining members of the Committee and the tellers, shall, without delay, be published by notices to be posted in the Mámlatdár's kacheri, and affixed to some conspicuous place in each religious institution under the management of the Committee.

XIII.—The registry book of votes and files of voting papers shall be kept open for the inspection of the electors for a fortnight after the result of the election has been declared in a convenient place at the town where the election took place, and shall be carefully preserved by the Committee among their records.

XIV.—The following persons will be entitled to vote at elections of members of Committees :—

(1) Owners of lands situated within the jurisdiction of the Committee, and paying an annual revenue to Government of not less than Rs. 20.

(2) Owners of landed property, situated as aforesaid, wholly or partially exempted from the payment of revenue to Government, but which, if not so exempt, would be liable to an annual payment of Rs. 20.

(3) Owners of house property, situated as aforesaid, of the estimated value of Rs. 250 and upwards.

(4) Occupiers of houses, situated as aforesaid, of the annual rental of Rs. 50 and upwards.

(5) Persons in the employment of Government on salaries of Rs. 150 per annum and upwards, or in the receipt of pensions from Government of the like amount.

(6) Possessors of private property income to the amount of Rs. 150 and upwards.

(7) Persons supporting any religious endowment under the management of the Committee by annual payments of not less than Rs. 50 or a donation of Rs. 500.

(8) Graduates of any University who have resided for six months prior to the election within the jurisdiction of the Committee.

(9) Any person not qualified as aforesaid, and claiming to vote, must establish his right to the satisfaction of the Committee:

Provided always that no persons shall be entitled to vote at any election unless he professes the religion for the purposes of which the institution

under the management of the Committee was founded or maintained, and is interested in its maintenance, and is not a minor.

Provided also that no person shall be entitled or allowed to vote unless he has been registered as a voter at least seven days before the occurrence of the vacancy at which he desires to vote.

XV.—Every Committee shall keep a register of voters, in which shall be entered the name, occupation, or other description and qualification, of every person entitled to vote at their elections; and every person satisfying the Committee that he possesses the qualifications hereinafter mentioned shall be entitled to be registered as a voter, and be furnished with a copy of the entry of his name, &c., in the register.

XVI.—No person shall be entitled to more than one vote for each vacancy.

XVII.—Voting by proxy shall be allowed only in the case of absentees supporting institutions under the management of the Committee by annual payments of Rs. 500 or upwards, or donations of Rs. 5,000. The authority produced by the proxy must have been executed before a public officer not below the grade of Mahálkári, and attested by him.

XVIII.—Voters proved to have wilfully registered more than one vote for each vacancy shall thereby be disqualified for again voting, and their names shall be removed from the register.

XIX.—The person who receives the largest number of votes shall be declared duly elected as a member of the Committee, and, in the event of two or more persons having an equal number of votes, the selection shall be determined by lot.

XX.—Any person proved to have given directly, or indirectly, any valuable consideration whatsoever in return for a vote shall be thereby disqualified from being elected.

XXI.—The election of any person except in conformity with these rules shall be null and void.

(G. R. No. 1662, dated 7th May 1866.)

18. It does not appear necessarily to follow from the provision in Section 7 of Act XX of 1863, "the local Government shall, once for all, appoint one or more Committees in every division or district," that a Committee should be appointed in each táluka.

If the Committee which was appointed under Government Resolution No. 1397 of 9th April 1867 for the management of the Hindu religious endowments in the Kumta Táluka, including what has recently been constituted the Ankola Táluka, is still sufficient for the purpose, it is not necessary under the Act to appoint a separate Committee for the Ankola Táluka, though it will be more convenient if in future the Committee is denominated

the Committee for the management of the Hindu religious endowments in the Kumta and Ankola tálukas of the Kánara District.

Section 10 of the Act merely lays down the procedure to be followed in filling up vacancies by the remaining members of the Committee, and should they fail to take the necessary steps, any person whatever may apply to the Civil Court which is empowered by the Act to fill up the vacancies.

Whether the vacancies which may occur in the Committee are filled up or not in accordance with the provisions of Section 10 of the Act, so long as there are not less than three remaining members the Committee is a legally constituted one.

Should the number of members ever become reduced by vacancies below three, the Committee would become extinct, and it would be necessary to appoint a fresh one.

(L. R. No. 1538, dated 28th November 1882; *vide* G. R. No. 8732, dated 12th December 1882.)

19. The lease of lands assigned for devasthán purposes granted in perpetuity for an annual rent by the manager of the devasthán for the benefit of the institution is valid under the provisions of clause 3 of Section 8 of Act II of 1863. (G. R. No. 654, dated 3rd February 1870.)

20. In preventing misappropriation of religious and charitable endowments, the same policy should be pursued in the old provinces to which Bombay Act VII of 1863 and the new provinces to which Bombay Act II of 1863 are applicable. (G. R. No. 6411, dated 9th November 1876.)

21. An allowance made by Government for the support of a Hindu temple is not liable to attachment in satisfaction of a debt incurred by the manager of the temple on his own account. The power of a manager of a temple to deal with its property has been discussed by the Privy Council in the case of *Prosunno Koomari Debya* vs. *Golabchund Babu* (L. R., 2 Ind. App., 145). In giving judgment, their Lordships say:—"There is no doubt that, as a general rule of Hindu Law, property given for the maintenance of religious worship and of charities connected with it, is inalienable. It is, however, competent for the Sebait of property dedicated to the worship of an idol, in the capacity of manager of the estate, to incur debts and borrow money for the proper expenses of keeping up the religious worship, repairing the temple or other possessions of the idol, defending hostile litigious attacks, and other like objects. The power, however, to incur such debts must be measured by the existing necessity for incurring them. The authority of the Sebait of an idol's estate would appear to be in this respect analogous to that of the manager for an infant heir,—a limited and qualified power, which can only be executed rightly in a case of need, or for the benefit of the estate. It is only in an ideal sense that property can be said to

belong to an idol, and the possession and management of it must in the nature of things be entrusted to some persons as Sebait or manager. It would seem to follow that the person so entrusted must of necessity be empowered to do whatever may be required for the service of the idol, and for the benefit and preservation of its property, at least to as great a degree as the manager of an infant heir. If this were not so, the estate of the idol might be destroyed or wasted, and its worship discontinued for want of the necessary funds to preserve and maintain them."

Such being the limits of the manager's power to deal with the funds, or charge the property of a temple, it follows as a matter of necessary inference that he cannot lawfully apply the funds or property of the temple to his own purposes. Nor can they be made answerable for debts incurred by him otherwise than for necessary purposes as above explained.

It is perhaps doubtful whether allowances to temples, though unquestionably granted and continued by Government on political considerations, come within the terms of Section 3 of Act XXIII of 1871; but the above decision of the Privy Council renders it unnecessary to discuss this point. In cases in which Government allowances to temples have been attached in satisfaction of the private debts of the pujári, and there is no Panch or Committee to interfere to protect the rights of the temple, the Collector is the proper person to do so, on behalf of the Hindu community. He should instruct the Government Pleader to apply for the removal of the attachment in the ordinary way, under Section 246 of the Civil Procedure Code.

(Adv. Gnl. No. 33, dated 2nd August 1875; *vide* G. R. No. 4665, dated 18th idem.)

22. Government should not interfere to have set aside the mortgage of a temple allowance effected long before it was enacted by the Legislature in Section 8, clause 3 of Bombay Act II of 1863, that such alienation is illegal.

The High Court have held (see I. L. R., 5 Bom., 393), that the above mentioned law merely declares the pre-existing common law of this country, that religious endowments, whether Hindu or Mahomedan, are not alienable.

Government have decided in the rules they have laid down on the subject that it is not desirable the Collector should bring a suit to enforce the proper application of an endowment.

Should the endowment ever come under any process by way of attachment or sale in execution of any decree of the Civil Court, it will be open to the Collector to intervene under the provisions of the Civil Procedure Code, and prevent any further alienation of the endowment.*

(L. R. No. 632, dated 1st June 1882; *vide* G. R. No. 3913, dated 17th idem.)

* *Vide* Rules given at page 182 of the Compilation of General Rules.

23. By Section 8, clause 3, of Bombay Act II of 1863, religious endowments, wholly or partly exempted as such from land tax, are declared inalienable. They are equally inalienable where the Act is not in force, for though Bombay Act VII of 1863 contains no such provisions as Section 8 of Bombay Act II of 1863, yet religious endowments are in their very nature inalienable. In the case of a religious endowment or public institution no sanad at all is necessary as has been decided by the High Court in the printed judgment in the case of *Manohar Ganesh* vs. *Lakhmiram*.* A declaratory entry in the Government registers is quite sufficient, and any one thereafter interfering with the property assumes the responsibility of a trustee.

The Collector may anywhere outside the Presidency Town take steps under Section 539 of the Code of Civil Procedure to prevent the fraudulent alienation of land or of revenues constituting an endowment. The simplest course to follow in such a case is to give notice and thereafter exact the full assessment. The possessor who had taken the land by alienation or who declined to fulfil the conditions as trustee of the holding could not take advantage of his own fraud as the Acting Remembrancer of Legal Affairs seems to have thought he could in such a case (see Report† No. 1117 of 1887,

---

* Printed Judgments of 1887.

† "I.—The answers to the questions put by the Commissioner appear to be as follows :—

(1) Under Hindu Law, devasthán lands are inalienable (I. L. R., V Bom., page 393), but may perhaps be temporarily mortgaged (I. L. R., IX Bom., page 422). The matter does not seem to be affected by Bombay Act VII of 1863. It is true that Section 6 says that when the Governor in Council shall under clause 1 of Section 2 finally authorize and guarantee the continuance in perpetuity to the holders, their heirs and assigns of land wholly or partially exempt from the ordinary payment of annual land revenue, the said lands shall (subject to the enactments contained in Section 7) be the heritable and transferable property of the said holders, their heirs and assigns. But this section is qualified by the proviso in Section 7: 'Provided always that the said rightful owner, his heirs and assigns shall not by this Act or anything therein contained be deprived of any rights or remedies to which he or they would be entitled against the said holder, his heirs or assigns for the recovery of the said lands or any part thereof if this Act had not been passed.' The result is that by the application of the summary settlement under Act VII of 1863 the continuance for ever of the exemption from the assessment has been guaranteed by Government without regard to the person who may for the time being be in possession. But the rights of persons beneficially entitled to the property are not affected *inter se*. In the case of devasthán lands there may be a good deal of difficulty in deciding who is the real owner, but I think there can be no doubt that the community for whose benefit the temple exists have an interest in the grant which is preserved by Section 7 and which gives them power to sue in the proper way for the restitution of the property if diverted to secular uses. The managers for the time being are certainly not the owners. They are mere trustees and the summary settlement does not confer on them any rights of alienation which they did not before possess.

(2) I think in the revised sanads the name of the person who was manager at the time the settlement was accepted should be inserted. The usual way in which I have seen sanads for devasthán land drawn up is in the name of the god

annexed to Government Resolution No. 6595 of 1887). By taking or giving in alienation, by refusing or omitting to perform the service annexed to the holding, the occupier would have estopped himself from alleging it was sacred property. In the case of land sold in execution, this would be especially the case, unless indeed the land had been sold under some special circumstances as sacred property—a case that would very seldom occur.

In the printed judgment* in the case of *Narayanrao* vs. *Raji Mahomed*, it is pointed out that a Musalmán's duty in relation to a grant for a *pir's* tomb is not transferable to a Hindu. Such a trans-

---

with the addition of the manager (*e.g.*, Shri Vithoba, *vahivatdár*). The right to a sanad was complete as soon as the settlement was accepted under Section 2, and as it may be difficult to ascertain to whom the right of management may have subsequently passed, the safest course will be to enter the name of the manager at that time.

(3). I do not think that Government can levy full survey rates from the alienees when devasthán land has been alienated from the institution to which it was granted. According to Hindu Law, a grant to a temple is permanent and cannot be resumed (I. L. R., VI Bom., page 546). And the fact that the managers may have illegally alienated it will not have the effect of making it revert to Government, or justify it in, as it were, participating in the sacrilege by imposing a full assessment on the land. Least of all can this be done in cases to which the summary settlement has been applied. In whatever terms the sanad may have been worded, the effect of Section 6 is to guarantee for ever the exemption of the land from assessment wholly or partially as the case may be. In regard to this point I would call attention to Mr. Naylor's opinion No. 757 of 17th November 1875, referred to in Government Resolution No. 6921 of 9th December 1875.

"II.—The only thing I think that can be done when the Collector finds that devasthán land has been diverted from its legitimate uses is to take action under Section 539 of the Civil Procedure Code with a view to its restoration. No other remedy seems possible in the present state of the law, and probably owing to the difficulty of obtaining accurate information this is not one that can often be resorted to. A Bill for the better administration of the Hindu and Mahomedan endowments was submitted by Mr. Naylor with his letter No. 43 of 15th January 1879, but the proposed legislation was not carried out.

"III.—In the above remarks I have referred only to Hindu devasthán. They apply, however, with equal force to Musalmán wakf property which by Mahomedan Law is similarly inalienable." (L. R. No. 1117, dated 25th August 1887.)

"With regard to the sanads, the safest and simplest course will be to have them made out in the name of the institution, adding the name of the manager with whom the summary settlement was effected, if he is still living, and provided he was the *vahivtádár* at the time of settlement. If he is dead, the name of the actual manager should be entered, and the sanad should be handed over to the manager whose name is entered in it. But if the person who would thus be entitled to receive the sanad desires that it be delivered to some other person, his request should be complied with, and where there is a person in possession of the institution and of the property appertaining to it who is not the manager with whom the summary settlement was effected or his regular successor, and the person in possession claims the sanad against the wish of the said manager or of his regular successor, it should be given to the person with whom the settlement was effected as above shown. In any other case delivery of the sanad should be withheld until the parties obtain a decision in the Civil Courts declaring who is entitled to it." (Para. 2 of G. R. No. 6595, dated 29th September 1887).

* Printed Judgments of 1886.

fer therefore would estop the Hindu transferee from setting up any exemption on account of the sacred character of the tenure.

In all instances of alienation of religious endowments it is for those who are really interested in the celebration or other continuation of the pious service to come forward and require that it be performed. The Collector's duty is merely to see that an alienation of the public property or revenue is not enjoyed under false pretences. In each case before taking any active measures, the Collector should convince himself, from such inquiry as he may deem necessary, that there is at least *primâ facie* proof that there has been a defeat of the object of the endowment, as by the transfer of a sacred endowment to purely secular hands and purposes. Transfers within a family or priestly class are sometimes allowed, but an alienation to other than sacred uses is not permissible.

If the Collector does interfere under Section 539, Civil Procedure Code, he should always demand his costs from the defendant and alternatively from the endowment. These costs will in general be only those of taking legal advice and may generally be recovered directly from the relators who appear as plaintiffs in the suit.

(G. R. No. 2023, dated 28th March 1888.)

Note.—This Government Resolution has been modified by Government Resolutions Nos. 5255, dated 26th July 1890, and 5066, dated 24th July 1891 (*vide* Government Resolution No. 7728, dated 29th September 1892).

24. The Hindu Law, like the Roman Law and the systems derived from it, allows both enforcement of a consequent duty and revocation of a gift made for a particular purpose which is not fulfilled by the donee (see W. and B. Hindu Law, 204). The English Law does not admit revocation. The principles applicable to religious property are explained very fully in the High Court's Judgment in the Dákor Temple Case (I. L. R., 12 Bom., 247), and are recognized in the Honourable Sir Charles Sargent's judgment at page 299 of the Printed Judgments for 1884. That a person endowed for a public purpose or discharging the duties of a religious office can anticipate and alienate the income by which he is supported, is not universally true under the English Law, as, *e.g.*, in the case of a judge. A sequestration of the profits of a parson's benefice has to be carried out subject to limitations and he cannot encumber his benefice even for his life or incumbency (*Shaw* vs. *Pritchard*, 10 Ba. and Cr., 241). Nor can any ecclesiastic alienate the church lands except for short terms regulated by Statute (see Burton's Real Property, Sections 217—218).

But the Courts have proceeded generally on narrower principles. They have not regarded Hindu benefices as essentially *extra commercium* so as to be absolutely insusceptible of any alienation or incumbrance except for their benefit. The principle has been partially but not completely applied. A

temporary alienation may not involve a complete defeat of the law as administered. Hence when the institution from which land or an allowance has been diverted can be ascertained, any interference on the part of Government seems undesirable. The beneficiaries interested should be left to assert their rights by suit. But when the supposed institution does not exist or cannot be ascertained, the cause for the remission has failed. The Indian Common Law right of the State to levy a land tax (see the Kánara Land Case, 12 Bom. H. C. R.) revives and the non-exercise of the right tends to tie up property, *i. e.*, the capital value of the remission, in a perpetuity not justified by any public purpose subserved by it. When the institution cannot be pointed out, the allowance or remission made in favour of it need not be conceded or continued.

(G. R. No. 5255, dated 26th July 1890.)

25. The orders in Government Resolution No. 5255, dated 26th July 1890, apply to cash as well as land alienations of religious endowments. The Courts would generally uphold an alienation of a cash allowance during the alienor's life. As a religious grant it could not be properly alienated, but as against the vendor the alienation would be upheld. The payment, however, usually remains, it is presumed, in the Government accounts as one made to the person directly entitled, while the vendee receives payment on an order from the vendor. On the vendor's death the vendee's right expires, as it was a personal right against the vendor to which Government for convenience sake gave effect, but which has now ceased to exist. If the allowance stands in the accounts as one to an institution, it cannot be payable to any one not representing the institution. No one else is capable of taking it with a legal title, and payment may properly be withheld, subject to the persistence of the alienee's right during the life of an alienor, who would himself be entitled to claim payment. In such cases the grant while it subserves its purpose is irrevocable, but when there is not even a pretext of its serving the purpose, the whole reason for the payment fails and it may be refused. As a service grant Government has of course full control over any payment. The Pensions Act XXIII of 1871 affords a safeguard in most cases of payment from treasuries.

The Government Resolution No. 5255, dated 26th July 1890, does not differ in principle from the earlier one, No. 2023, dated 28th March 1888, asserting the right of Government. But it would be a vain and unprofitable course for Government to rescue property from alien hands merely to hand it over to pious beneficiaries and thus save the latter the expense of legal proceedings. When the institution or the intended service has no longer any one to represent it, Government can take the benefit for the public.

(G. R. No. 5066, dated 24th July 1891.)

26. The following opinion (No. 60, dated 15th January 1891) of the Remembrancer of Legal

Affairs on the subject of the resumption of devasthán, was communicated to all Commissioners and Collectors :—

"The devasthán grant which formed the subject of the reference reported on in my Report No. 1665 of 30th October 1890 is, it now appears, an endowment for watering the village cattle.

"2. The Collector states that its conditions may be looked on as the same as those of a devasthán grant.

"Probably the endowment was originally so regarded, kine being invested by Hindu religious feeling with a peculiar sanctity.

"The grant might also enure for the benefit of the villagers for the gratuitous watering of whose cattle the endowment provides. In neither aspect of the case would Government be justified, in my opinion, in resuming the grant on failure of performance of service. If it has a religious object, the grant would be protected from resumption by the general principles of Hindu Law referred to at Indian Law Reports, 5 Bombay, 396. If it is purely secular, it is for the benefit of the villagers whose interests therein would be annulled by the proposed resumption.

"3. The present incumbent can be compelled to perform the duties attaching to the grant, whether he has alienated his life-interest in the remuneration or not, or his place may be supplied by appointment of another in his default, whereon the alienated interest would determine. In any case the alienation cannot extend beyond his life-time.

"4. But if Government have any interest in the performance of the duties, they cannot enforce it by putting an end to the endowment.

"5. It is remarkable that the Collector states 'The land is held under a Summary Settlement Sanad by the Pátel and Kulkarni.' This apparently means that the land is held by those officers and not that the sanad was granted by them. It does not appear under what authority the sanad was granted. But if the settlement were made under any section of Bombay-II of 1863, other than Section 8 of that Act, the land must have become the transferable property of the holder. If the settlement were made under Section 8, the land might be recoverable from the mortgagee (*vide* Section 16 (*g*)), but the recovery could not be effected by the resumption proposed on behalf of Government.

"6. I do not think the resumption of devasthán by imposition of full assessment can ever be legal. The only cases, in which such property can become liable to full assessment, appear to me to be cases in which the class of beneficiaries being wholly extinct, the property reverts to Government by a quasi escheat."

(G. R. No. 1604, dated 2nd March 1891.)

27. The following opinion (No. 1096, dated 29th August 1889) of the Remembrancer of Legal Affairs on the question whether a suit between the claimants to a devasthán cash allowance requires a certificate under the Pensions Act, and whether in the absence of such certificate execution can be withheld by the Collector, was circulated to the Divisional Commissioners and Collectors for information and guidance :—

"The cases noted in the margin are authorities which appear to support the Subordinate Judge who decided the suit in his view that the Pensions

Indian Law Reports,	2,	Madras,	294.
" "	5,	"	302.
" "	XI,	"	283.

Act would not bar the suit. There has never, I think, been any decree precisely on the point in the Bombay High Court. But I think it very probable the question would in this Presidency be decided on the same grounds as in Madras.

"Pensions and grants imply pensioners and grantees, personal recipients of the bounty of Government, and Government alone have a right to decide as to the distribution of that bounty.

Indian Law Reports, 1 Bombay, 75.

"But religious *endowments* are at least in theory impersonal, and are either for the support of some services deemed religious, or the maintenance of some building regarded as sacred. The object of the bounty is not a man at all, although the fund must necessarily be administered by some trustee or manager who no doubt practically exercises proprietary rights over it. Government have no particular interest in seeing that such trustee performs the duties of his trust. If he neglects them or wastes the funds, those interested might bring a suit under Section 539, Civil Procedure Code, to compel performance, and the Courts might appoint some other trustee or manager, and Government would pay the cash allowance to the trustees so appointed.

"Religious endowments are no doubt inalienable under Hindu Law and also, if they take the form of land, under Bombay II of 1863, Section 8, Clause 3.

Indian Law Reports, 5, Bombay, 393.

"But the restriction applies rather to the *corpus* than to the revenue, or management would be impossible. Alienation is perfectly justifiable within certain limits as to time, justifying necessity and provision for performance of the duties, and Government can hardly in the case of a Hindu religious endowment be in a position to dispute these points with the recipients, even if Government had any interest in doing so.

23 Weekly Reporter, 253 (Privy Council case).
Indian Law Reports, 6 Bombay, 596.
" " " 6 " 298.
20 Weekly Reporter, 471.
12 Bombay High Court Reports, 214.
6 " " " " 250.

"I must also note that in a very recent decision it has been held that the Pensions Act would not restrict the jurisdiction of the Courts to entertain suits relating to allowances for which Government are admittedly liable to some one or other. The Act is always construed strictly, and according to the Allahabad High Court, even if the cash allowance were a pension, no certificate would be necessary to a suit between rival claimants thereto, if Government admitted that some one or other was entitled to it. In the case of a devasthán cash allowance, it would probably be held that it was neither a pension nor a grant within the meaning of Sections 4, 5 and 6 of the Pensions Act, but an endowment. Government do not dispute their liability to pay the allowance. It seems to be utterly immaterial to Government who is the actual payee.

Indian Law Reports, X Allahabad, 396.

Indian Law Reports, 4, Bombay, 437.

"It could not for a moment be urged that Section 11 of the Pensions Act would exempt the allowance in question from attachment. That section refers to *pensions* granted on political considerations on account of past services or present infirmities or as a compassionate allowance. It has no reference to any but *personal* grantees."

(G. R. No. 7099, dated 20th September 1889.)

28. No general orders have been passed by Government authorizing Collectors to exercise the powers specified in Section 539 of the Civil Procedure Code,

and it is usual for the Collectors to report each case as it arises for the orders of Government. (G. R. No. 7728, dated 29th September 1892.)

29. All religious endowments in this country are inalienable independently of Section 8 (3) of Bombay Act II of 1863 and notwithstanding Section 6 of Bombay Act VII of 1863, and suit would be maintainable under Section 537, Civil Procedure Code, to prevent malversation by a manager, committee or trustee.

I. L. R., 5 B., 393.

The word 'holder' does not, in connection with a mosque, mean a person in possession, but a person or body of persons, such as a committee, manager or trustee, that has accepted certain trusts and responsibilities in respect of the management of and dealing with the property.

If a person in possession has not the status of a trustee, &c., but is a mere caretaker, then apparently Government could recognize his connexion with the mosque by issuing a service sanad such as that which in the case at I. L. R., X B., 34, appears to have been held as conclusively establishing the inalienability of the land beyond the life-interest of the person in possession.

(L. R. No. 942, dated 14th June 1892; *vide* G. R. No. 5385, dated 1st July 1892).

III.—HAKS AND RASAMS.

1. As regards bonds granted in compensation for haks abolished by Acts XXVII of 1837, I of 1838 and XIX of 1844, such bonds as are held for the benefit of religious and charitable institutions stand in a different position from bonds in the possession of individuals. The haks which they represent were intended as perpetual endowments, and the payment of the principal sum into the hands of the managers would involve the risk of its being dissipated, and the consequent permanent loss to the institution of the funds provided for its support The Government of Bombay is accordingly authorized to declare bonds of this description to be irredeemable (except when otherwise desired by the holders), the payments in respect of them being debited to their appropriate head in the public accounts, as provided for in Government Resolution * No. 3126, dated 20th September 1858. (S. of S. No. 2, Rev., dated 12th January 1860; *vide* G. R. No. 631, dated 15th February 1860.)

2. The allowances granted to Mevási Chiefs in the Kaira and Khándesh Collectorates as compensation for the abolition of the transit duties which they formerly levied from travellers and merchandise

* Government approve of the proposal of the Revenue Commissioner for alienations as modified by the Accountant General that payments on account of compensation bonds to temples should be debited to the appropriate head in the public accounts of "Grants to Mosques and Temples." (G. R. No. 3126, dated 29th September 1858.)

passing through their nákas are to be continued to the heirs of the parties from whom agreements were taken in 1841-42, or to those of any near relatives whose name may have been subsequently entered in the accounts under proper authority. The name of the eldest representative of the family should alone appear in the accounts, those of all subordinate sharers being excluded. (G. R. No. 3590, dated 22nd August 1865, and G. L. No. 3957, dated 20th September 1865.)

3. The allowances to the Mevási Chiefs and Bhils in Khándesh in pursuance of the orders in Government Resolution No. 3957, dated 20th September 1865, should be continued hereditarily, and the sanads should contain a proviso that, in the event of the direct male line becoming extinct, payment will be withheld pending the orders of Government. The rule that payment is to be made only to the eldest representative of the family is not to be retrospectively applied. Separate sanads should be issued and separate payments continue to be made to those who have drawn their allowances direct from Government. (G. R. No. 2117, dated 25th April 1874.)

4. The practice regarding succession before the foregoing orders of 25th April 1874 does not limit the discretion of Government in applying the rules laid down in those orders. (G. R. No. 5781, dated 25th April 1874.)

5. The jakát haks were a species of black mail levied by the Bhil Náiks in Khándesh and Násik, for the protection of traders or travellers passing through their jungles. These exactions were stopped by the British Government, which consented to pay the Náiks an annual allowance as compensation for the loss thus sustained by them. This allowance is a pension granted or continued by Government on political considerations, and is therefore not liable to attachment in satisfaction of a decree of a Civil Court; but is protected from such attachment by Section 11 of Act XXIII of 1871. Political considerations are not defined in the Act, but apparently this must be taken to be a pension or grant of money payable on the part of Government in respect of a privilege or perquisite enjoyed by the Bhil Náiks which it was deemed politic to abolish; and it cannot be doubted that it was of political importance to give travellers and traders the protection of a regular Police instead of the irregular convoy of a Bhil Chief.

But while it is considered that this allowance is protected by the Act, the Civil Court must determine whether or not it is so protected. The Act does not provide that Government shall decide what pensions are payable on political considerations, and that its decisions shall be binding on the Courts. As the law stands, every case of attachment of pension must, I think, be decided on its own merits by the Court which issues the attachment. It may be hard on a Bhil Chief, that he should have to employ

a vakil, and be put to the trouble and expense of an enquiry, when the matter might be settled by the Collector's certificate; but it is an inconvenience caused by the law, and must therefore be endured. The Collector should come to the assistance of the Bhil Chief, and instruct the Government Pleader to take the necessary steps to have the attachment removed. It would be of evil example, and tend greatly to diminish the just authority of the Civil Courts, were the Collector simply to refuse compliance with the Court's order, instead of taking the proper steps to have it set aside.

(Adv. Gen. No. 33, dated 2nd August 1875; *vide* G. R. No. 4665, dated 18th idem.)

6. The Kasab and Betheli Veros paid by persons in Government and alienated villages in the Panch Maháls should be abolished. (G. R., F. D., No. 1699, dated 6th July 1887.)

7. As girás payments are now made from Government treasuries, inám, sirpáv, chendu and other allowances granted by Grássiás for the trouble of collecting their girás should cease to be paid on the death of the persons holding them at the date of this order. Such allowances should be escheated and will not be available for increasing the remuneration of insufficiently paid Pátels. (G. R. No. 3757, dated 24th August 1861.)

8. When Grássias die leaving no male heirs, their widows should be paid the whole allowance during their life-time. In the event of there being more than one widow, the allowance is to be continued until the death of the last survivor. (G. Rs. Nos. 4059, dated 16th July 1873, and 7381, dated 6th November 1888).

9. By the decision of the High Court to be found at page 203 of the Indian Law Reports, August 1876, it is clear that a toda girás hak comes within the meaning of the definition contained in Sections 3 and 4 of the Pensions Act XXIII of 1871, and that no suits will be successful against Government with reference to such haks. (G. Rs. Nos. 4384, dated 17th July 1877, 4929, dated 13th August 1877, and 5977, dated 4th October 1877.)

10. The following opinion of the Remembrancer of Legal Affairs, No. 1108, dated 6th October 1888, was concurred in by Government :—

"In the matter referred for my opinion by Government memorandum No. 3073, dated 16th May 1888, one I. V. has purchased, at a Court auction sale for Rs. 26, the right, title and interest of M. D. and G. B. in toda girás allowances worth respectively Rs. 6 and Rs. 74 per annum.

"2. The holders of these girás allowances had executed kabuláyats binding themselves not to alienate their girás out of their families, and admitting the right of Government to suspend or discontinue the allowances on their failure to comply with these and other conditions.

"3. The Collector reports that certain statements as to the limited rights of the judgment-debtors were made at the time of the auction. Such statements could have no effect

on the right, title and interest sold, though they may have deprecated them at the sale

"4. It appears that the sales took place before the new Act VII of 1887 became law.

"5. The question for consideration is whether the girás allowances should be continued or should be withheld from the auction-purchasers.

"6. It is true that girás allowances have been recognized as a species of property (8 M. I. A.) and capable of alienation and attachment and sale in execution of decree (4 B. I. L. R. 432 confirmed by the Privy Council at 5 B. I. L R., 408).

"7. But I need hardly point out that these rulings cannot affect the rulings at 1 B. I. L. R. 203, 4 B. I. L. R. 437 and 443, which decide that Section 4 of the Pensions Act XXIII of 1871 bars a suit against Government to enforce payment of such haks unless a certificate from the Collector be produced, and that therefore the auction-purchaser could not maintain a suit against Government, should Government decide to discontinue the allowances.

"8. I assume, therefore, that the question referred is not so much whether a suit would be against Government if the allowances were discontinued as whether Government could equitably withhold from the purchaser.

"9. It may, however, be well to note that the latest ruling on the Pensions Act, reported at X, All., I. L. R. 399, lays down that no certificate is necessary if Government admit the existence of the grant, and where the only contention is as to the person entitled to receive it. The Allahabad case distinguishes the case reported at 1 B. I. L. R. 75 and I do not think it would affect the present case if Government asserted its right to *discontinue the allowance altogether* on its alienation from the holder's family. For in such case there would obviously be no admission but a *denial* of the continued existence of the grant. But if Government continued the allowance but refused payment to the auction-purchaser, then apparently under the recent Allahabad ruling, the purchaser could enforce his right without a certificate.

"10. Thus Government could without fear of suit discontinue the allowance, but the alienation prior to the Toda Girás Act VII of 1887 might, under the Allahabad ruling, still be enforced against the holders, if the allowance were continued to *them*.

"11. The clause against alienation, if correctly recited in the Collector's report, does not appear to me to be sufficient to justify Government in discontinuing the allowance. It refers only to voluntary alienations and not to alienations by process of law.

"The distinction is taken at 7 B. I. L. R. 256 and 7 B. I. L. R. 262 from which it appears that a restriction in a lease on alienation by mortgage, sale or otherwise must be taken as confined to some act of the lessee *ejusdum generis* with those expressly mentioned, and would not apply where the alienation was by act of law. Unless therefore the kabuláyat contain a provision *that the holder shall not allow the grant to be attached and sold in execution and that if he did the grant should be discontinued*, I do not think the auction sale would operate as a forfeiture justifying a withholding of the allowance.

"12. The recognition of an alienation is of course a question distinct from the operation of an alienation as a forfeiture of the grant.

"13. The recognition of alienations made before the grant is governed by Section 6 of the Act. Under that section if the alienation is not by instrument the Collector must, on proof of the alienation within six months of the passing of the Act, give the alienee a certificate under his official signature and seal that the allowance is not subject to the provisions of the Act. If no such proof be adduced before the Collector within six months after the date on which the Act came into

force, *i.e.*, before the 28th October 1888, the Collector would not be bound to recognize the alienation. Apparently proof has been already produced and if so there is no alternative but to recognize the alienation.

"14. As the auction-purchaser has bought only the right, title and interest of the holders of the allowance he is bound by all conditions that were binding on the judgment-debtors, and if, as I gather from the concluding paragraph of the Collector's letter No. 808 of 22nd March 1888, the holders were bound to give security for their good behaviour, those and all other terms on which their rights were conditioned would be binding on the auction-purchaser.

"15. It appears from the report of the Honourable Mr. Naylor, No. 1310, dated 27th September 1883, that the course to be taken in respect of sale of such allowances was laid down in Government Resolution* No 5118 of 12th September 1873, and has since been followed (*vide* Government Resolution† No. 8168, Revenue Department, dated 6th Nov-

* Petition from Utamram Jamietmal, dated 8th January 1873—Stating that he made repeated applications to the revenue authorities to cause to be paid to him the amount of a toda girás hak purchased by him at a public sale, but he has not yet received the payment thereof, nor any definite orders on the subject, and praying that the papers in his case may be sent for, and on due consideration orders be issued to pay the hak to him, with arrears and interest at 9 per cent., and to enter the allowance in his name.

Report by the Revenue Commissioner, N. D., No. 3880, dated 13th August 1873.

Memorandum from the Revenue Commissioner, N. D., No. 4160, dated 2nd September 1873—Submitting the correspondence that has passed between him and the Settlement Officer, N. D., on the above claim, as requested in Government memorandum No. 4862, of the 28th ultimo.

RESOLUTION.—The course recommended by the Alienation Settlement Officer, N. D., in his report to the Revenue Commissioner No. 295, dated the 24th June 1873, may be adopted, *viz.*—

"As the allowance in question was sold before the passing of the Pensions Act XXIII of 1871, the purchaser's name may be entered in the accounts subordinate to that of the girassia and the allowance paid to him on the production, at each payment, of a life certificate of the girassia so long as the girássia's male line may be in existence."

(G. R. No, 5118, dated 12th September 1873)

† Letter from the Collector of Broach to the Commissioner, N. D., No. 1397, dated 1st May 1883:—

"In the case of toda girás hak purchased by one Utamram Jamietmal of Broach at a public sale by the Civil Court, Government, in their Resolution No. 5118 of 12th September 1873, have on the recommendation of the late Alienation Settlement Officer decided that *because the hak in question was purchased by Utamram before the passing of the Pensions Act XXIII of* 1871, his name be entered in the Government books subordinate to that of the girássia and the allowance paid to him on production, at each payment, of a life-certificate of the girassia so long as the girássia's male line may be in existence.

"2. But there is now a case before me in which one Bhvánishankar Toláshankar has purchased a girás hak standing in the name of Thákor Chhatrasangji Parbatsangji also at a public sale effected by the Civil Court, but *after* and not *before* the passing of the Pensions Act, the date of the purchase being 15th March 1882.

"3. I have therefore the honour to request instructions as to whether I should order in this case the name of Bhavánishankar Toláshankar to be entered in the Government books against the hak that he has purchased as above, and if so whether it should be entered *in lieu of* or subordinate to the name of the girássia, and if the latter, whether the payment to him should be subject to the condition of his producing at each payment the life-certificate of the girassia as long as the latter's male line is in existence as in Utamram's case."

Memorandum from the Commissioner, N. D., No. 3009, dated 29th May, 1883:—

"Forwarded to Government for orders.

"2. The undersigned thinks that the name of the purchaser should be entered subordinate to, and not in lieu of, the name of the girássia, without prejudice to the claims of sub-sharers, if any, and payment made to him on production of a life-certificate. It appears that Government are not interested so long as the male line continues and the above certificate is produced."

Memorandum from the Remembrancer of Legal Affairs, No. 1310, dated 27th September 1883.

RESOLUTION.—In the circumstances stated, His Excellency the Governor in Council concurs with the Remembrancer of Legal Affairs in thinking that the course prescribed in Government Resolution No. 5118, dated 12th September 1873, should be adopted in the present case.

Copies of Mr. Naylor's report should be forwarded to the Commissioner, N. D., and the Collector of Broach.

(G. R. No. 8168, dated 6th November 1883.)

ember 1883). Government Resolution No. 5118 of 1873 is not, however, on the records of this office. Apparently its directions are alluded to in the concluding paragraph of the Collector's letter No. 808 of 22nd March 1888, and if so, there appears to be no reason why they should not be followed in this case.

"16. Whether alienations of this nature are restricted to the life interest of the judgment-debtor, is a question not referred for my opinion and appears to be set at rest by the correspondence which preceded the passing of the Toda Girás Act."

(G. R. No. 7450, dated 9th November 1888.)

11. Since the Toda Girás Allowances Act VII of 1887 has become law, no object is to be gained by the issue of sanads for such allowance, and it is therefore best that none be issued. The Act in question was passed for the purpose of declaring the law relating to those allowances (*vide* its preamble), and it would not be competent to Government, if it were desired, to impose any conditions upon their continuance other than those set forth in the Act; and as the Act appears to determine everything which it is necessary to have determined in respect of the allowances, no further document seems to be called for in the interests either of Government or of the recipients. (L. R. No. 1525, dated 2nd October 1890; G. R. No. 7327, dated 15th idem.)

IV.—MISCELLANEOUS.

1. The Commissioners are authorized to re-enter in the accounts, without reference to Government, cash allowances which may have been erroneously struck off. (G. R. No. 2327 dated 13th June 1862.)

2. Where no valid title-deed is forthcoming, the regular practice is to consider the first recognized recipient under the British rule as the first grantee of an allowance. (G. R. No. 3903, dated 11th October 1864.)

3. Allowances such as that on which the following reference No. 437, dated 20th October 1875, was made by the Alienation Settlement Officer, S. D., are to be continued hereditarily in the line of the recipient at the introduction of British rule:—

"I now do myself the honour to enquire whether the simple word *hereditary* used in their letter No. 2135, dated 1st June 1847, should not be interpreted to mean hereditary *to the incumbent at the introduction of the British Government*, and not to the recipient only of that year.

"2. The intention of the Government of the day seems to have been to confirm the Collector's recommendation, and this was that the allowance should 'be considered hereditary *under the rules dated 23rd June 1842*' (para. 13 of Report No. 68 of 13th January 1847.) Now the particular rule runs thus:—

> 'All (allowances) enjoyed for a period of sixty years, and in possession of a second successor in lineal descent from the original grantee at the introduction of our Government, to be considered hereditary to male offspring.'

"3. This rule, indeed, is not so clear as it might be. Still, interpreted by the *Amended* Rules of 1842 published in 1852, there can be no doubt that it was the male offspring of the recipient at the introduction of the British Government that was meant."

(G. R. No. 6441, dated 18th November 1875.)

4. Except under exceptional circumstances, application for the interference of the Courts, in cases of attachment of cash allowances granted for political considerations, should not be made unless the pensioner agrees to pay the cost of the application. (G. R. No. 7234, dated 23rd December 1875.)

5. There is no reason for holding that a gameti's share in a *khálsa* village is protected from attachment by Section 11 of Act XXIII of 1871. It is not a "pension" in the ordinary acceptation of that term, and if the word "pension" in that section be held to mean any kind of payment, still the payment in question is not granted or continued by Government "on political considerations or on account of past services or present services or as a compassionate allowance." It appears to be a payment to which the former proprietor of a village is entitled in consequence of his having contracted with Government to resign his village on Government's undertaking to pay him a certain portion of the revenue of the village annually in perpetuity. There is nothing of the nature of a grant or of a pension in such a payment. (L. R. No. 1225, dated 2nd November 1877; *vide* G.R. No. 7102, dated 28th idem.)

6. Haks are saleable property, moveable or immoveable, according to their origin, and are, therefore, liable to be attached and sold in execution of decrees. Varshásan allowances appear, from the particulars given in the Law Reports, to be in many cases in the nature of perpetual annuities, and where of that character, and not protected from attachment by Act XXIII of 1871, would be regarded as saleable moveable properties, and liable to attachment and sale. Varshásan allowances and amals vary much in their character, and some would be protected from attachment by Act XXIII of 1871, while others would not; thus it is impossible to lay down any general rule, but each case as it occurs, with full particulars of the character of the allowance attached, should be referred for legal advice. (Adv. Genl. No. 68, dated 22nd, October 1878; *vide* G. R. No. 5946, dated 19th November 1878.)

7. Copies of the following opinion No. 1280, dated 1st October 1885, of the Remembrancer of Legal Affairs were forwarded to all Commissioners and Collectors:—

"I do not think that Government can raise any objection to the attachment by the Civil Court of the allowance*, which by the sanad is to be continued without objection or question on the part of Government as to the rights of any rightful holders thereof, whether such rights shall have accrued by inheritance, adoption, *assignment or otherwise*.

"2. The allowance is not protected from attachment by Section 11 of the Pensions Act (XXIII of 1871), for it is not a pension granted or continued by Government on poli-

*The particular allowance with reference to which the Legal Remembrancer's opinion was recorded was a cash allowance of Rs. 19 entered as *mokása amal* payable from the Karmála Treasury. The character of the allowance was not clear from the sanad nor could it be ascertained from the Mámlatdár's records. In the margin of the sanad the allowance was classed as "transferable private property."

tical considerations or on account of past services or present infirmities or as a compassionate allowance."

(G. R. No. 8644, dated 24th October 1885.)

8. Cash allowances should appear in the registers of tálukas or villages to which they originally belong, but there is no objection to payments being permitted from the treasuries of places where the recipients reside and their adjustments by the usual method of debit and credit in the financial accounts. (G. R. No. 3186, dated 30th May 1876.)

9. Due attention should be paid to the correction of the alienation lists. Any laxity in this respect may lead at some future time to the commission of fraud, and it is therefore of great importance that all necessary alterations should be carefully and punctually made in the printed copies of the lists supplied to Collectors, and all orders regarding such alterations should be sent through the officers in charge of tálukas with a view to their being noted in the táluka lists. (G. R. No. 7257, dated 6th December 1877.)

10. The Commissioner, C. D., in whose office cash alienation lists are prepared, should not forward the lists to the Commissioners and Collectors of such districts as have no concern with them. (G. R., G. D., No. 137, dated 13th January 1888.)

11. The alienation office should be supplied with two copies of every Government Resolution on the subject of cash allowances whether payable from the central or any other Division. (G. R. No. 8093, dated 12th October 1892.)

12. The Government of Bombay is empowered to sanction charitable allowances not exceeding Rs. 50 per annum in the aggregate in any one case to the destitute relatives of deceased revenue freeholders. All cases in which the aggregate annual grant proposed exceeds Rs. 50 should be submitted for the sanction of the Government of India. (G. I., H. R. & A., No. 317, dated 14th July 1880; *vide* G. R. No. 3909, dated 27th idem.)

13. The name of a widow who holds an allowance (no matter on what tenure it be held) and who remarries into a distinct family and thus severs her connection with the said allowance, should be struck off. The fact that an allowance is entered as being given to a widow "for life" is not a bar to withdrawing the allowance when she remarries. The words "for life" must reasonably be held to refer only to such period as the widow remains unmarried after the decease of her first husband. The allowance is granted to her for her maintenance after his death, but when she remarries, her maintenance devolves upon her second husband and she has consequently no claim to an allowance from the State for the purpose. To avoid, however, any possible doubt in any future cases which may arise when an allowance is given for the maintenance of a widow, it should be specified that such allowance is granted "for life or until remarriage." (G. R. No. 9501, dated 26th December 1883.)